(Testimony of Andre P. Laumond.)

Q. Right on here? A. That's right.

Q. 14934? A. I believe that is it.

Q. In other words, Mr. Laumond, this figure, 14934, there, ties [1520] in with that?

A. That's right.

Mr. Faulkner: I would like to read the list here to the Jury on this exhibit:

"Nye & Nissen, Inc., SS. George Ross, SS. C. T. Brady; SS. Wm. S. Clark, SS. C. T. Brady, SS. Bernardo O. Higgins, SS. Fort Royal, SS. Jacob S. Mansfeld, SS. Bernardo O. Higgins, SS. Jacob S. Mansfeld, SS. Fort Royal, SS. Francis Wardwell, SS. Jacob S. Mansfeld, SS. Cape Mendocino, SS. Francis Wardwell, and SS. Sara Teasdale."

Those are the ships of the deliveries and the items of merchandise were as follows:

$802.50, $142.80, $1350.00, $1,372.59, $151.28, $495.00, $34.80, $1,005.09, $34.80, $57.30, $134.00, $1,062.00, $143.40, $1,341.00, $141.90.

You have testified, Mr. Laumond, that this check for $3991 pays the bill which is Exhibit 113 and you say that because the 16533 appears there——

A. That's right.

Mr. Faulkner: We offer the Voucher No. 16533 as part of the cross-examination of this witness.

The Court: Admitted and marked.

(The document was thereupon received in evidence as Defendants' Exhibit AD.)

Mr. Faulkner: Q. This record shows, does it not, that the transaction dated November 3, 1943, was not an isolated [1521] transaction, but was a

(Testimony of Andre P. Laumond.)

part of a series of transactions reflected on this voucher?

A. It was among the items paid on that date.

Q. Paid on that voucher. This voucher represents a transaction with the firm of Nye & Nissen starting on November 11th and ending on December 13th, the William S. Clark, the James Phelan, William S. Clark, James Phelan, President Grant, five transactions with the President Grant, and two with the steamship J. Maurice Thompson, and one with the SS. Cape Perpetua, and the amount of those transactions, it starts out with $1,105.04, $220.80, $1,239.00, $279.18, $2731.44, $686.25, $686.25, $686.25, $466.65, $138.75, $466.05, and $54.70.

Now, Mr. Laumond, I notice it says here November 11th a credit of $1105.04—what does that mean?

A. A credit was issued by Nye & Nissen which we applied as a reduction on the total charges that were paid on this voucher.

Q. Is that here on the credit slip that I show you here? A. It is.

Q. You don't know when the understanding relating to the credit was made, do you?

A. No, I wouldn't.

Q. In other words, it could have been made the moment of the delivery, or any time up to the date of this statement; isn't that correct?

A. I wouldn't know anything about it.

Q. You testified you knew on your direct examination when it [1522] was made?

A. That was the statement that this credit might

(Testimony of Andre P. Laumond.)

have been issued, that the merchandise might have been returned on any date or time prior to that date.

Q. In other words, Mr. Laumond, all that you know about this credit is that a sale was made, that a credit was given. You have kept the records of this company for a long period of time, haven't you? That's right.

Q. The usual method when merchandise is received by the American President Lines that is returned is for the vendor company to give a credit?

A. Yes.

Q. That happens quite frequently, does it not?

A. Yes.

Q. I mean, it is not a rare occurrence for merchandise to be the subject matter of a return to the vendor and a credit being given?

A. I wouldn't say it was.

Q. I notice this particular paper—what are these items? That is a little different, that voucher, than the other. What are the items down below?

A. We changed the method of accounting. Whereas before this voucher was merely kept in relation to invoices with which to trace the deliveries, this is actually a copy of the check voucher, itself. We changed the method of accounting.

Q. I notice this is dated January 3, 1944, the other was in 1943.

A. Yes. According to that it would seem January 1, 1944, was the time we changed the procedure.

(Testimony of Andre P. Laumond.)

Q. I don't follow this. In other words, if this is a credit [1523] how does it amount to $3991.92 and down here this amount $3991.92——

A. This is a recapitulation by vessels. All invoices are listed individually here for the purpose of accounting.

Q. I see. In other words, here you have William Clark, $1,239.00, and down here you have $133.

A. That's right, because there was an invoice paid for the Clark for $1,239.00, against which the credit of $1105 applied for the purpose of accounting, or a direct charge to the vessel of $133.96.

Q. That is how it occurred?

The Court: The jury may take a recess.

The Court: You may proceed.

Mr. Faulkner: Q. Mr. Laumond, this credit memorandum dated November 11, 1933, relates to a credit of $1105.04. Prior to that time the firm of Nye & Nissen had sent a bill to the American President Lines for $1350 and another one for $1239. Do you know of your own knowledge which of these bills this credit memorandum is a credit on?

A. There is no identification on the credit memorandum, which would place me in a position to definitely identify on which it belongs.

Q. In other words, it is a credit on some prior shipment, some prior delivery of merchandise to your company, isn't that correct?

A. That is right.

Mr. Faulkner: This voucher No. 14357 is the

(Testimony of Andre P. Laumond.)

record covering the check for $142.80, and I offer the voucher as part of the cross-examination of this witness as an exhibit for the defendant.

The Court: It may be admitted and marked.

(The document was received in evidence and marked Defendants' Exhibit AE.)

Redirect Examination

Mr. Pratt: Q. Mr. Laumond, you spoke in answer to Mr. Faulkner's questions in regard to the funds of the War Shipping Administration which were supplied to your company, the American President Lines. Do you know just how that fund originated?

A. Well, when our company signed as General [1524] Agent of the War Shipping Administration, in accordance with all the existing regulations, they were provided with a working fund, which I believe at the start was a million dollars. Later as our allocation of vessels increased and the disbursements were naturally higher during the month, it was found necessary to increase the working fund to the present fund, which I believe is two million dollars.

Q. Does there always remain a balance in that fund?

A. Yes, there is always a balance in that fund.

Q. How is the balance maintained?

A. Well, at the end of each month the total of the disbursements made during the month, as shown by the check register, is verified by an auditor

(Testimony of Andie P. Latimond.)

and the total amount of the fund is reimbursed and brought up to two million dollars.

Q. Every month the fund is brought up to two million dollars? A. That is correct.

Q. And there is always that much Government money in the fund, is that right?

A. That is right. In fact, the fund may be greater than two million, and if it is, at the end of the month we gave the WSA, turn over to the WSA the excess over the amount of the working fund.

Q. Your company has receipts from the operation of these boats, has it not? A. Yes.

Q. So you may have to pay something back in order to maintain the fund at just two million dollars, is that right? [1525]

A. That is right.

Mr. Pratt: That is all.

The Court: Step down.

HAFFEL H. BROWN;

called as a witness on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Haffel H. Brown.

Direct Examination

Mr. Pratt: Q. Mr. Brown, where is your home?

A. San Francisco, 1742 Laguna Street.

Q. You have lived in San Francisco for sometime, have you? A. Yes, sir,

(Testimony of Haffel H. Brown.)

Q. What is your occupation? A. Cook.

Q. Whereabouts?

A. Well, since 1921 for the American President Lines.

Q. That is, you have been at sea since 1921, have you?

A. Off and on all along.

Q. And previous to that were you at sea as a cook? A. Previous to 1921?

Q. Yes.

A. Previous to 1921, no. I was on the railway.

Q. On the railroad? A. Yes.

Q. But for the last 25 years you have been at sea as a cook on ships of the American President Lines, is that right?

A. Yes, which was formerly the Dollar Line.

Q. What?

A. Which was formerly the Dollar Line. [1526]

Q. In the month of October, 1943, what ship were you on?

A. I goes over to Richmond, California, and gets on the William S. Clark.

Q. On the William S. Clark?

A. That is right.

Q. When did you go aboard the William S. Clark. Do you have your discharge certificate with you?

A. I have. Will you mind running through there? You will find the William S. Clark.

Mr. Faulkner: May I have the pending question?

(Testimony of Haffel H. Brown.)

(Question read.)

Mr. Pratt: I do not find the William S. Clark among these.

The Court: Is there any question about him being on the steamship Clark?

Mr. Faulkner: I never heard of the witness and I never heard of the Clark until this morning.

Mr. Pratt: The William S. Clark certificate or discharge does not seem to be here, Mr. Brown.

The Witness: Well, it was in October, anyway. I know that. We went over and got the ship.

The Court: Q. October of what year?

A. 1943.

Mr. Pratt: Q. 1943?

A. Yes, sir, over at Richmond, California.

Q. What was your position?

A. Chief cook.

Q. You were chief cook on the William S. Clark? A. Yes, sir. [1527]

Q. That was a new boat, wasn't it?

A. Brand new from the shipyards.

Q. From what shipyards?

A. Kaiser's Shipyards.

Q. And it was delivered here at San Francisco, was it?

A. Delivered from the Kaiser Shipyard down here to the American President Lines, after taking it out and running it.

Q. When you went on this boat were there any ship's stores on board?

A. None, whatsoever.

(Testimony of Haffa H. Brown.)

Q. When stores first came on were you on the boat?

A. When the stores first came on?

Q. Yes.

A. After we came out of the shipyard and run up and down the bay—they were trying it out for something—compass or something—then we went along by the dock.

Q. What dock was that?

A. American President Lines' dock down there.

Q. And they brought on some stores?

A. Brought on—there were some stores out on the dock. Now, what it consisted of, I don't know, because I didn't have nothing to do with that.

Q. Were there some port stores brought on first?

A. Yes, sir, on all ships there is always port stores.

Q. Do you remember the quantity of eggs that were brought on as port stores?

A. Around in the neighborhood of about 5 cases of eggs.

Q. After these port stores came on board—you say about 5 cases of eggs—how long did the ship remain here in the [1528] harbor of San Francisco?

A. Well, I couldn't exactly tell you, how many days it remained there at the pier down there, and then we moved over to Oakland before we went South.

Q. Then do you remember that there were further stores brought on for the voyage?

A. All the stores were put on for the voyage

(Testimony of Haffel H. Brown.)

before we left Oakland, and later on down here at Pier 42 where we were at.

Q. Do you remember a quantity of eggs being brought aboard for the voyage?

A. Well, my recollection; when the stores were all aboard there was quite a bunch of cases. I would say 50 or 60, maybe more than that. I don't know.

Q. You do not know how many?

A. No, I didn't count them, because they were all stacked up in a chill room.

Q. They were placed aboard where?

A. San Francisco.

Q. I know. Whereabouts on the ship?

A. In the store room, in the chill room.

Q. In the chill room? A. Yes, sir.

Q. What was the condition of that chill room?

A. The chill room was all right.

Q. You said that was a new boat?

A. Yes, sir.

Q. Did you have occasion to go into the chill room? A. Every so often.

Q. How frequently?

A. Well, perhaps I would be up there doing something, and I didn't want to bother the galley boy, I would run down there, myself. [1529]

The Court: The reporter must take down everything you say, so you talk slowly and help him. Speak so the jurors can hear you. Proceed.

Mr. Pratt: Q. You had a number of assistants, did you, on this boat? You were the chief cook?

A. Yes, sir.

(Testimony of Haffel H. Brown.)

Q. What assistants did you have?

A. I had a second cook, a second cook, a baker and a galley boy.

Q. And these eggs were in the chill room, as you call it, the chill box?

A. Yes, that is where I kept the eggs and vegetables at.

Q. When did you first have occasion to use any of these eggs that came aboard as you have described?

A. Right here at the pier, down here, and over at Oakland.

Q. And what, if anything, did you observe about those eggs?

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial, and not binding upon the defendants. The eggs are not identified with any eggs in this case.

Mr. Pratt: These are the eggs that went on this boat indicated by these invoices, and purchase orders.

Mr. Faulkner: Oh, no, that is Mr. Pratt's statement. There is nothing in the record that these eggs ever got on the dock, even, or were delivered into the ship.

Mr. Pratt: The evidence will clearly establish just where these eggs came from and what happened to them.

The Court: With that assurance I will allow it. [1530] The objection will be overruled.

Mr. Faulkner: Exception.

(Testimony of Haffel H. Brown.)

Mr. Pratt: Will you read the question?

Mr. Faulkner: This is offered on what count?

Mr. Pratt: The first count of the indictment.

Mr. Faulkner: Now, on the first count of the indictment, your Honor, the only evidence in my view that is admissible under that is evidence relating to the inspection and grading of eggs. These transactions do not require egg inspection. There is not a single charge in the conspiracy charge of presenting a false claim. They were very careful not to charge that in the conspiracy count. Now, a transaction relating to eggs that are not the subject matter of inspection or any claim that they met inspection or any requirement of an inspection does not come within the purview of the conspiracy count.

Mr. Pratt: If the Court please, this is a general charge of fraud against the United States, a conspiracy to defraud the Government in connection with the sale and delivery of food products. Every last invoice that was introduced here, it will be shown, was a fraud upon the Government. The description in the indictment definitely states that among the methods used to defraud the Government were various tricks, schemes and devices; and among others which we expect to prove are the tricks and devices connected with the transaction that Mr. Brown, the witness, is testifying about.

Mr. Faulkner: Your Honor will recall that we objected to this indictment upon the ground it was a general charge, and there isn't any such thing

(Testimony of Haffel H. Brown.)

in the law as a general charge. To defend that charge they said it was a specific charge, and they maintained before your Honor and claimed before your Honor that this was a specific charge, and particularly disclaimed in the early stages of this case, prior to the impanelment of the jury, that the charge did not relate to the presenting of a false claim. Now, here is a transaction relating to some eggs, which I assume the evidence will disclose were not good eggs. But that is not the charge in this case. Did they defraud the Government in connection with its inspection and grading of eggs? Now, here is a transaction where inspection and grading is not required.

The Court: Is the matter submitted?

Mr. Faulkner: Yes, your Honor.

The Court: The objection may be overruled.

Mr. Faulkner: Exception.

The Court: Read the question.

(Question read.) [1532]

Mr. Faulkner: Your Honor overruled the objection on the assurance of counsel that they would connect the eggs?

The Court: Yes.

Mr. Pratt: Q. What did you observe about these eggs, Mr. Brown?

A. To be frank with you, the eggs, I will say this is my crew, here, I am just illustrating about these eggs. You order your eggs this way, that way, and the other way. I got five or six bowls there that I crack the eggs into before I take them

(Testimony of Haffel H. Brown.)

over to the stove, to the frying pan, to see whether they are good, or not. I had a lot of trouble with them for the simple reason, why, a lot of them was very, very, very bad.

Q. In what respect were they very, very bad?

A. Rotten. To be frank with you, rotten.

Q. How about the odor from these eggs?

A. Some of them would run you out of there if you were in there, the way you could have smelled them.

Q. How long did that continue?

A. That continued until we got into Long Beach, Pedro, rather.

Q. How long a period of time was that from the time you first started to use these eggs until you got down to San Pedro, or Long Beach?

A. We got down there the latter part of October, because we left on November 4th.

Q. During that period of time how many of these cases of eggs did you open and examine?

A. Well, there was quite a few of them opened to try to get some good ones out of the [1533] bunch.

Q. Were you able to use some of the eggs that were in these cases?

A. Some I could use and some I couldn't, and they got so bad I just give up the sponge, told them I was going to get off.

Q. What proportion of the eggs, if you can tell, approximately, were inedible?

A. When you broke it, you know, instead of the whites being firm, the yokes being firm, it would

(Testimony of Haffel H. Brown.)

be runny, an odor, a very bad odor. You know what a bad odor an egg is.

Q. In a case of eggs there are 30 dozen, aren't there? A. 30 dozen in a case.

Q. How many of the 30 dozen, on the average, could you use? A. Well, not many.

Q. When you got down to San Pedro, or Long Beach—which was it?

A. San Pedro first. We sailed from Long Beach.

Q. First San Pedro, and then you moved over to Long Beach? A. That's right.

Q. That is right nearby, isn't it?

A. Quite a little way across.

Q. When you got down to Long Beach, what happened to these eggs, if you know?

A. Well, the eggs was so bad I told the steward, I said, "You call the captain."

Q. Never mind what was said. What happened?

A. What happened?

Q. Yes.

A. Three bunches of men came down and they come [1534] in looking at these eggs. Two men, just like you two, and they commenced candling those eggs.

Q. Were you there when they candled the eggs?

A. Every once in a while I would have to go down there and I would see them candling them.

Q. Where did this candling take place?

A. Down by the chill box where my meat bench

(Testimony of Haffel H. Brown.)

is, where I cut my meat at, right outside the chill box.

Q. There were two men?

A. Yes, the first time.

Q. Do you know just when that was, the date.

A. No, I do not.

Q. Then what happened?

A. Just a few days before we sailed.

Q. Then what happened?

A. They went away and two more men came down.

Q. What did they do?

A. Done the same thing.

Q. Did they open the cases? A. Yes.

Q. The first two men, how many cases did they open, do you remember?

A. No, I don't remember. They opened quite a few of them.

Q. The second two men, do you know how many cases they examined?

A. No. They had them all stack up there, quite a few cases, all four of them fellows.

Q. Meanwhile, had any other eggs come on the boat? A. Yes.

Q. After the second two men came then what happened?

A. Some little bit of a man came down there and he done the same thing. Pretty soon he commenced squawking, saying what [1535] I did about the eggs.

Q. What happened to the eggs?

(Testimony of Haffel H. Brown.)

A. He took them all, ordered them all taken off the ship.

Q. Were they taken off the ship?

A. They was all taken off the ship, every one of them.

Q. Where were they then taken, do you know?

A. I don't know.

Q. After they were taken off the ship—was that all of the eggs?

A. That was all of the eggs that was left on the ship when they taken them off.

Q. Then were other eggs brought in their place?

A. Another shipment of eggs came.

Q. Do you know how many cases?

A. Well, the same amount, I would judge, for the trip, you know.

Q. The eggs that then came on were used during the voyage, is that right? A. Right.

Q. Where was this voyage to?

A. This voyage, we terminated the voyage in Baltimore, Maryland.

Q. You went where?

A. We went—where did we go?

Q. Yes.

A. We sailed from Long Beach on February 4th.

Q. Yes.

A. Thirty days later we were in Tasmania, which is Hobart, Australia. From there we went to Ceylon and Colombo, together.

Q. You went around and finally landed at Baltimore? A. Finally landed in Baltimore.

(Testimony of Haffel H. Brown.)

Q. You sailed on the 4th of November?

A. 4th of November [1536] from Long Beach.

Q. With these eggs that were brought on originally here at San Francisco, do you recall whether there was a quantity of butter?

A. The butter and eggs was all taken off in Long Beach.

Q. What did you observe in regard to the butter between the time it was put on and the time it was taken off at Long Beach? A. It was rancid.

Mr. Faulkner: The same objection.

Mr. Pratt: Q. It was rancid? Yes.

Mr. Faulkner: We ask the best evidence of the butter; where did it come from, who supplied it?

Mr. Pratt: We will show that the butter, if the Court please——

Mr. Faulkner: And not within the issues in this case, your Honor.

Mr. Pratt: Oh, yes, it is. In the indictment, it is covered by the specific terms of the indictment.

Mr. Faulkner: Show me the terms. Here is the indictment.

Mr. Pratt: I will use my own copy if I can find it.

"Defendants and said co-conspirators misrepresented the weights and prices of cheese sold to the United States of America—War Shipping Administration."

The invoice for this butter represents——

Mr. Faulkner: Are you reading now? [1537]

(Testimony of Haffel H. Brown.)

Mr. Pratt: I am not. I am calling your attention, however, to subparagraph (1).

Mr. Faulkner: "Misrepresented the weights and prices of butter." That is all.

Mr. Pratt: And, furthermore, I quote again from the indictment, the frauds being described in various ways:

"A. By grading, weighing, packing, selling, and delivering to the United States of America—War Shipping Administration, War Department, and Navy Department, inferior products through frauds and deceptions practiced upon the inspectors, graders, and representatives of the United States Department of Agriculture, the War Shipping Administration, United States War Department, and United States Navy Department, who inspect, weigh grade, and receive butter, cheese, and eggs sold and delivered to said United States of America—War Shipping Administration, War Department, and Navy Department."

Now, this butter was received and utilized, or attempted to be utilized by this witness, who at the time was in the employ of and paid by the United States War Shipping Administration. It comes definitely and distinctly within the allegations of this bill in various other places.

Mr. Faulkner: Well, just read the indictment and it shows that I am right. In other words, the last paragraph and the first, I assume he has read the best parts of it, both are [1538] applied to de-

(Testimony of Hafiel H. Brown.)

ception of the inspection service. The butter was not inspected. It was not required to be inspected.

Mr. Pratt: The phrase is far broader than counsel——

Mr. Faulkner: Where did you last read from, Mr. Pratt, if you will tell me that?

Mr. Pratt: I read from subparagraph (a).

Mr. Faulkner: Here is subparagraph (a):

"By grading, weighing, packing, selling, and delivering to United States of America—War Shipping Administration, War Department, and Navy Department, inferior products through frauds and deceptions practiced upon the inspectors, graders, and representatives,"——

Mr. Pratt: This witness——

Mr. Faulkner: Just a moment.

Mr. Pratt: He is a representative.

Mr. Faulkner: He is not a representative of the Government. It says here:

"Inspectors, graders, and representatives of the United States Department of Agriculture, the War Shipping Administration, the United States War Department."

If it is their position before your Honor to get this evidence in because some butter was delivered on a ship and was used by a cook, that they are here on a fraud practiced upon a cook in a vessel, there is not a word in any statute of the United States that holds that is a fraud. It has to be in connection with the inspection service of the United States and the inspection of merchandise. When

(Testimony of Haffel H. Brown.)

there is no inspection required under the law and under the rules and regulations we submit that this is not a transaction that comes within the purview of this indictment. It is not mentioned as an overt act. The next part that Mr. Pratt——

Mr. Pratt: Read paragraph L.

"Defendants and said co-conspirators misrepresented the weights and prices of butter sold to the United States of America—War Shipping Administration and War Department."

Mr. Faulkner: The quality of the butter has nothing to do with its weight or price.

Mr. Pratt: Oh, indeed.

Mr. Faulkner: Indeed, that's right. Weight and price are no involved.

The Court: Read the question.

(Question read by the reporter.)

The Court: Objection overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Do you understand the question?

The Witness: Yes.

Mr. Pratt: Q. Will you answer the question? What did you observe about this butter?

A. It was rancid.

Mr. Pratt: That is all. [1540]

Mr. Faulkner: I would like to cross examine the witness, your Honor.

The Court: Well, it is time to adjourn. The jurors may be excused until two o'clock.

(A recess was taken until two o'clock p.m.)

Afternoon Session, February 20, 1946, 2:00 p.m.

The Court: Waive the roll call, stipulating and agreeing the jurors are all present and seated in the box.

HAFFEL H. BROWN,

recalled.

Cross-Examination

Mr. Faulkner: Q. Mr. Brown, I understood that you were the ship's cook on this boat, the Clark, in that voyage in October, 1943. A. Yes.

Q. Your recollection is that around the 15th of October you started serving eggs, is that right, the 14th or 15th?

A. Well, now, I wouldn't be positive about this date. It was somewhere along there, you understand. I told you I went over to Richmond and got the boat.

Q. You went over and got it. You mean you went over with the men who got it, isn't that right?

A. Well, I went over and got it for the part I was assigned to do on it.

Q. Yes. A. That's it.

Q. Do you recall when that was?

A. Well, it was along about the middle of October, somewhere in there.

Q. Of 1943? A. That's right.

Q. Is that correct? You never saw any of these eggs put on board the ship, did you?

A. What?

Q. You didn't see the delivery of any of the

(Testimony of Haffel H. Brown.)

eggs that you [1541] saw on the ship later, delivered to the ship, did you? A. Those eggs?

Q. Yes.

A. As I stated this morning, when we pulled along side the dock from the shipyard, a brand new ship, understand, we pulled alongside the dock, they said they had stores on the dock. Now, what the stores consisted of I don't know.

Q. The point is you did not see the stores loaded onto the ship?

A. No. I seen them going by the galley. What it was I didn't pay any attention to.

Q. Isn't it a fact the ship was loaded at night and you were not there the night it was loaded?

A. The ship was loaded night and day, both, Mister.

Q. Weren't the ship's stores loaded on at night and you were not there, you were absent from the ship at the time they were loaded; isn't that the fact? A. I won't say that.

Q. All right. A. No, I wouldn't say that.

Q. You started to use some eggs on the ship, isn't that correct?

A. The first meal was breakfast. I started using eggs; yes.

Q. You continued using eggs for how long a period until the eggs were taken off?

A. I was squawking about the eggs from the time I started using them until they took them off.

Q. Do you recall how long that was?

A. Well, from the time we started serving the

(Testimony of Haffel H. Brown.)

first meal there until they taken them off in Long Beach. [1542]

Q. Do you know when that was?

A. That was a day or two before the 4th of November.

Q. How many men were on board that ship, Mr. Brown, in the voyage from San Francisco to Long Beach?

A. Well, the ship's crew and the gun crew, I guess around 70 some odd men, might have been 80.

Q. Between 70 and 80? A. Yes.

Q. In the beginning of a voyage it is a fact the men eat quite a few eggs, isn't it?

A. That's right, they eat everything.

Q. About how many eggs would you say the ordinary crewman would eat each meal in the beginning of a voyage?

A. Well, do you want me to go into detail? I will try to tell you.

Q. What?

A. Do you want me to tell you, you want me to take time out I will try to explain it to you.

Q. No, I just want you to tell me about what the average number of eggs a man would order for his breakfast when he has just come aboard the ship is.

A. The average man will eat two eggs, but the hungry man usually eats four eggs, six eggs.

Q. In your experience at sea, when you ship on a new crew you usually ship on a crew of hungry men, don't you? A. That's right.

(Testimony of Haffel H. Brown.)

Q. And the crew on the SS Clark was typical of the crew you have seen many times?

A. In other words, you know how a [1543] bunch of children are; young boys, you know, some had never been used to it, to all varieties of things.

Q. The SS Clark wasn't any different than those other ships, was it?

A. Not in that respect.

Q. Would you say the average number of eggs a man eats would be four a day, four for breakfast, or would that be too high?

A. No, I wouldn't say that would be too high, no.

Q. At the termination of the inception of the voyage something happened and these eggs were removed, that's right, is it not?

A. There had to be something happen or else I would have got off. That's the reason they found out the eggs were no good.

Q. You found that out?

A. I found that out quick, and I made a complaint about it.

Q. Isn't it a fact, Mr. Brown, that you found that it was substantially the condition of those eggs on that ship commencing the day you first started serving them, that is, in the period from San Francisco, down to Long Beach, and up to the time they were removed, those eggs got worse and worse each day, didn't they? A. Each day?

Q. In other words, the last few days the bad eggs were much worse in proportion to good eggs than they were in the beginning; isn't that correct?

(Testimony of Haffel H. Brown.)

A. The eggs was so bad that the steward, I had him go down and see if he couldn't find some better eggs. He went down and opened this case and that case, but instead of getting better they were practically the same. [1544]

Q. Mr. Brown, your conversation with the steward, that is not what I mean. You left here around the 15th of October, and as you proceeded down to Long Beach those eggs got worse each day?

A. No, I don't think we—we was out here in the bay on the 15th of October.

Q. What?

A. I said I didn't think we were out of the bay on October 15th.

Q. Well, you started serving food on the 15th?

A. Yes.

Q. And from then on the eggs each day got progressively worse, didn't they? A. Yes.

Q. These eggs that you have said were not good eggs, were they moldy? A. Moldy?

Q. Yes.

A. Well, you want me to tell you how they were?

Q. What?

A. You are trying to put words in my mouth. I ain't going to answer them that way. I will answer the right way that I seen it.

Q. I am not trying to trip you up at all. I just want to get a picture of this transaction. The eggs were moldy, were they?

A. Well, I don't know what you call moldy.

Q. Did they have fuzz on them?

(Testimony of Haffel H. Brown.)

A. Fuzz on them?

Q. They had fuz.

Mr. Pratt: Did you answer the question?

Mr. Faulkner: He said they had fuzz.

Mr. Pratt: Q. Did you answer that way?

The Witness: No. [1545]

Mr. Faulkner: I beg your pardon. May I have the record read.

Mr. Pratt: He repeated the question.

Mr. Faulkner: I thought he answered it.

The Witness: No, I did not.

Mr. Faulkner: Q. Did they have fuzz on them? Yes, or no, please.

A. Yes, or no, you say? No. I didn't see no fuzz.

Q. You did not. Did you see any mold?

A. I seen plenty of bad eggs.

Q. You are talking about the inside of the eggs. I am talking about the outside of the eggs. Did they have mold on them? A. I didn't see it.

Q. Did they have anything on them that you could wipe off with a towel? A. Yes.

Q. What was that? A. Sweat off the box.

Q. Now, Mr. Brown, you are familiar with refrigeration on board a ship, more or less, aren't you? A. Yes.

Q. You know, do you not, that when the temperature of the refrigerating box is not kept at a proper pitch the eggs will have sweat on them?

A. Anything will have sweat on it.

Q. If it is not——

(Testimony of Haffel H. Brown.)

A. (Interrupting): That is the chill box, yes; the icebox, too, as far as that is concerned.

Q. If the chill box is kept at the proper temperature it will not have sweat on it, will it?

A. That part is all right. [1546]

Q. Although this was a new ship, it is a fact, is it not, that the engineer on that vessel worked on that refrigeration on a number of times in the first ten days of that voyage; isn't that correct?

A. I won't say that.

Q. Well, did he work on it?

A. Yes, he worked on it. He worked on it practically all during the voyage at different times.

Q. In that trip there were frequent occasions, were there not, there were several occasions when you reported to the engineer that the refrigeration was not at the proper temperature?

A. I made a remark, I called his attention to it at the breakfast table.

Q. The eggs that you have described, what you saw on them, you wiped off with a towel, that was sweat; is that right? A. Yes.

Q. But not mold? A. No.

Q. Is that right? But not—I forget these terms, myself, your Honor.

Q. The eggs that were replaced, the eggs that you took off at San Pedro or Long Beach, the second shipment that came aboard after the others were removed, those eggs were all right, were they not?

(Testimony of Haffel H. Brown.)

A. I was using them eggs when I got in Baltimore in April.

Q. They were good eggs? A. All the way.

Q. Do you know where the first shipment of eggs came from, what firm?

A. That is out of my jurisdiction; I have no knowledge of that.

Q. Do you know where the eggs came from on the second——

A. As I said before, I don't know where none of that stuff came from.

Q. You mentioned something about butter, here, Mr. Brown. When you were on that voyage between the 15th of October and the 3rd or 4th of November, was the butter in good condition in that period? A. No.

Q. After you took these eggs that you saw on that ship—withdraw that.

Before you used the eggs you would wipe that sweat off, wouldn't you, so it wouldn't drop into the pan or the bowl? A. That's right.

Q. After you wiped it off of the eggs what was the appearance of those eggs?

A. They were all right.

Q. Did you candle any of those eggs, yourself?

A. Who, me?

Q. Yes, you.

A. After I seen them candled I did it myself to see.

Q. I don't hear you. You have your hand in front of your mouth.

(Testimony of Haffel H. Brown.)

A. You asked me did I candle them?

Q. Did you candle any of the eggs on this voyage between here and Long Beach?

A. I candled several of them in Long Beach before the men got on the ship.

Q. You had handled good eggs and bad eggs for a good many years?

A. No, I wouldn't say that. [1548]

Q. You have wiped musk or fuzz off eggs many times, haven't you? A. How is that?

Q. You have wiped musk or fuzz off an egg many times?

A. No, no. I ain't handled them, myself.

Q. You haven't handled that kind?

A. No, no.

Q. The eggs that were not good, that appeared to you not to be good, you threw away, did you not?

A. They didn't appear wasn't good; they just wasn't no good.

Q. Well, you threw them away?

A. In the slop bucket right by my feet.

Q. That is where you threw them?

A. What?

Q. That is where you threw them. It was right handy, right there to throw them?

A. Keep one, keep a bucket handy.

Q. Were those eggs brought up into your galley in the crates in which they were shipped on board ship? A. They was brought up in crates?

Q. Yes.

(Testimony of Haffel H. Brown.)

A. I would have them brought up, eight or ten dozen, something like that, at the time. When they got so bad I get the boy to bring me a whole case up there.

Q. Did you have a full case of eggs brought up there? A. What?

Q. Did you have on many occasions a full case of eggs brought up there?

A. Bring up a full case of eggs, three dozen to a layer.

Q. So on occasions you have 30 dozen eggs brought up there? A. Yes. [1549].

Q. Do you know how many cases of eggs you used in the period until November 2nd or 3rd when the eggs were replaced?

A. I wouldn't attempt to say, it was so bad.

Q. Five cases?

A. I say I wouldn't attempt to say, they were so bad.

Q. Ten cases, Mr. Brown?

A. I say I wouldn't attempt to say.

Q. Mr. Brown, even in cases of good eggs, eggs that are almost uniformly good, you run across bad eggs, don't you?

A. Well, I would say once in a while you might run across one that didn't look so hot and you would throw it away.

Q. Now, you served eggs from the time you started to serve them on the first day, regardless of the date, until the 2nd or 3rd of November, you served eggs every day, didn't you?

(Testimony of Haffel H. Brown.)

A. Every day for breakfast and to cook with them otherwise.

Q. And you ate eggs during that period, didn't you? A. How is that?

Q. You ate the eggs, yourself, didn't you?

A. Well, I don't know whether I did, or not. I couldn't tell you the truth about that, whether I eat the eggs or not. I get so full of fumes that I don't care for it.

Q. You don't remember whether you ate them, or not, is that right? A. No.

Q. Now, Mr. Brown—— A. Yes.

Q. The eggs that you cooked for breakfast were not the only eggs [1550] consumed in the galley, were they? You used eggs for other purposes?

A. The eggs that were cooked for breakfast?

Q. They wouldn't be the only eggs that were used; you use eggs for other purposes?

A. I just said that, yes. You use eggs other than for breakfast purposes.

Q. Baking? A. Baking, puddings.

Q. Mayonnaise?

A. And others like that.

Q. Ice cream?

A. I didn't make no ice cream, but you use it for that purpose.

Q. Have you any idea how many dozen eggs you threw in that bucket at your foot that was so handy?

A. How many dozen?

Q. Yes.

A. No, I don't have no idea how many dozen I

(Testimony of Haffel H. Brown.)

threw away, but I am going to tell you right now that I didn't throw no two or three dozen in a bucket while I am serving a meal. I'll tell you that right now, because that would be an exaggeration. In other words, every egg I cracked——

Q. Mr. Brown, I just want to know how many dozen eggs you threw into the bucket you had.

A. Well, I threw quite a many, quite a good many, but as far as counting them, I couldn't tell you, it was just many.

Q. Mr. Brown, do you remember being called as a witness and testifying before Judge C. J. Goodell, a judge of the Superior Court, in the month of May, 1944; do you remember Judge Goodell, a tall man?

A. I was in one of these courts, I don't know what the judge's name was. [1551]

Q. Do you remember testifying before him?

A. I testified before some judge. Who it was, I don't know.

Q. You remember you were sworn as a witness there, just as you have been here? A. Yes.

Q. Is it not a fact, Mr. Brown, that you were asked this question and did you not give this answer:

"Directing your attention to voyage 1, do you recall anything unusual in connection with the use of eggs aboard this ship? A. Well, I do, yes.

Q. Would you please elaborate?

A. As I said, we got the ship on the 14th of October. The 15th we started to serve meals right

(Testimony of Haffel H. Brown.)

down there at pier 42, and from then on up until April 4th, when we terminated the voyage in Baltimore, Maryland. The other stores we taken on here in San Francisco, were meat, vegetables, poultry, eggs, and what-not, was all in first-class condition with the exception of the eggs and the eggs was very inferior. What I mean by that, some was fair and some was no good at all."

Did you give that answer?

A. I think I did.

Q. At that time you never mentioned anything about inferior butter, did you? A. Butter?

Q. Butter. Isn't it a fact, Mr. Brown, that in May, 1944, you told Judge Goodell that all of the stores on that ship except the eggs were in first-class condition?

A. I answered [1552] it in front of the judge the same as I am answering in front of this judge and you people. When the question is put to me I give them an answer of some kind on it.

Q. You tried to give the answer as accurately as you remembered it at that time?

A. Yes. If they didn't ask me I didn't give it to them.

Q. Your memory of what happened in regard to the ship's stores on the voyage of the Clark in 1943 was clearer in May, 1944, than it is today, wasn't it?

The Witness: Will you repeat the question?

Mr. Faulkner: Q. I say your memory in May, 1944, right after your Voyage No. 1 was completed,

(Testimony of Haffel H. Brown.)

was clearer as to what happened on that voyage than it is now, two years later? A. Oh yes.

Q. Now, Mr. Brown, you were asked this question, were you not: "Did you notice anything on the outside of the egg that called your attention to its appearance, anything unusual about the outside of the egg?

"A. Eggs is that way, if they ain't kept in a very, very cool place, you understand, naturally they form what you call a kind of, oh, well, now, wait a minute, let's see. I want to frame it the right way. It was more on the order of mould like, you understand. Some people calls it whiskers, but I don't call it whiskers. It is kind of moss gathered on there, you understand?

"Q. What kind of moss?

"A. That is caused from the temperature of the box where they are kept at.

"Q. That is superficial, that is, on the top of the shell, isn't it?

"A. That is on the top of the shell, yes sir."

Didn't you give those answers to Judge Goodell?

A. I answered that question here a few minutes ago.

Q. Yes, but a few minutes ago you said there was no mould on [1553] them.

A. Didn't I tell you I had to use a rag to wipe them off?

Q. You said you had to wipe sweat off but there was no mould on them.

A. That is what I said.

(Testimony of Haffel H. Brown)

Q. In May, 1944, you told Judge Goodell there was mould on these eggs due to the temperature of the chill box, isn't that right?

A. That question was put to me just like I told you a little while ago——

Mr. Pratt: I object to the last question.

Mr. Faulkner: I will withdraw that question.

Q. When you told Judge Goodell, "Let me see. I want to frame it the right way. It was more on the order of mould like, you understand. Some peoples calls it whiskers, but I don't call it whiskers. It is kind of moss gathered on there, you understand?" Was that the manner in which you were describing to Judge Goodell the sweat that you have been describing in this courtroom?

A. The egg was bad, as I told you. Do you understand?

Q. I understand the eggs were bad.

A. If you don't understand I don't either.

Q. What I want to know, Mr. Brown, is isn't it a fact that they had whiskers on them?

A. I never made no statement that they had whiskers on them to you.

Q. No, not to me, but you did to Judge Goodell, didn't you? [1554]

A. Well, I guess they was trying to put words in my mouth. That is what I said to you awhile ago. I said I'm not going to let you put no words in my mouth.

Q. Then a member of the Attorney general's office asked you this:

(Testimony of Hallet H. Brown.)

"Q. What kind of moss?

"A. That is caused from the temperature of the box where they are kept at."

Do you remember telling him that?

A. I tell you what I tell anybody else. If you keep something in one of those boxes and the temperature goes down, it causes the stuff in there—vegetables, eggs or anything—to form a sweat, which it does—meat or anything else.

Q. Yes, the eggs sweat. You know that they sweat, and after they sweat, they form a mould, don't they? They form whiskers, don't they?

A. I said a little while ago I am not going to let you or nobody else put words in my mouth to that effect, when I don't say it.

Q. Weren't you asked this question:

"Q. In other words, if you took the egg you had in mind, the one you were describing, and wiped it clean with a towel, it would look like a fresh egg?

"A. It would look like a fresh egg."

Didn't you tell that to Judge Goodell at this deposition [1555] on the 18th of May, 1944?

A. Do you want me to describe that to you?

Q. No sir, I want to know if you told Judge Goodell in May, 1944, if these eggs that had the sweat——

A. That is pretty near two years ago and my memory isn't as good——

Mr. Faulkner: Your Honor, may I have the witness listen to the question and not argue? I

(Testimony of Haffel H. Brown.)

understand the situation, but I would like the witness at least to hear the question and then give whatever answer he wishes; whether these eggs, when you wiped them clean with a towel, if they did not look like a fresh egg?

A. Did I make a statement to that effect?

Mr. Faulkner: Q. Yes.

A. Did I wipe them clean with a towel?

Q. Yes. A. If that is there.

Q. I will read it to you again:

"In other words, if you took the egg you had in mind, the one you are describing, and wiped it clean with a towel, it would look like a fresh egg?

"A. It would look like a fresh egg."

A. If it had water on it, it would, sure.

Q. Pardon me?

A. If it had water on it, dew, or anything like that, it would be white on a brown egg. The majority of eggs you handle is all white eggs.

Q. To eliminate that, these particular eggs that had either mould or whiskers on them, or had sweat on them, if you took a towel and wiped it off, it had the appearance of a fresh egg on the outside?

A. Some would and some would not.

Q. Did you give this answer to this question:

"Q. Mr. Brown, did you attempt to wipe any of the eggs?

"A. Well, I can answer it this way, if you will let me, if you want me to. A lot of them eggs that I handled on those other ships—not only ships but anywheres I worked, you understand, some of them,

(Testimony of Haffel H. Brown.)

in order to keep dirt or whatever may be hung on the shell, you will take a damp cloth, wipe it off, and keep it from dropping in with the egg, of course."

A. I made that statement.

Q. "You know, some people are finicky about their eating. The cleaner you serve it the better it will be for all concerned. Sometimes I wipe eggs a great deal."

Did you give that answer?

A. I have did that.

Q. So you have wiped eggs a great deal?

A. I have did that.

Q. What? A. I say I have did that.

Q. And if you gave any testimony before in this trial that you had not handled many bad eggs before, that would be an error, wouldn't it? [1557]

A. Wait a minute, now. You drove your point in there. I am going to tell you mine. I am waiting on the rest of these people and I have to send that food in there clean to them or I am going to eat it myself. What I won't eat myself I won't give you. Is that plain?

Q. That is as plain as can be.

A. You just said I didn't wipe them off, and I told you awhile ago I did wipe water and stuff off the eggs.

Q. We will get it even clearer than we have it now. Were you then asked this question:

"Q. What I am getting at is this: You have described the eggs as having what you call a mouldy

(Testimony of Haffel H. Brown.)

appearance. I want to know, first of all, if you remember wiping off that mouldy appearance?

"A. Yes.

"Q. Did you?

"A. The consequence would be after I would wipe it off, you understand, to keep that little dirt from falling in the bowl where I crack it——"

And then that is the end of the answer. All of these eggs that had either a mouldy appearance or whiskers on them or sweat on them, you wiped off, is that right?

A. In order to keep the dirt from going in the bowl.

Q. That is right, but you did wipe them off, am I correct in that? A. That is correct. [1558]

Q. And all of the eggs that you served, were they all wiped off by you before you served them?

A. Some of them didn't need no wiping. Some of them was clean enough and some wasn't.

Q. Do you remember drawing a picture for Judge Goodell, actually drawing the mould or whiskers on an egg at that deposition? Do you remember you drew a picture? You were given a piece of paper and you drew a mould or whiskers on an egg? Do you remember that?

A. No, I don't remember that, but this is what you are trying to get at. I see that. You are trying—he had me show him what an eye or a dark spot in an egg was.

Q. No, I am asking you if you remember draw-

(Testimony of Haffel H. Brown.)

ing a picture for Judge Goodell of the mould or must on the egg?

A. I am no drawer, so I don't remember that.

Q. At all events, you remember you never at any time tried to draw sweat on an egg, don't you?

A. Draw sweat?

Q. Yes?

A. I told you I was no artist.

Q. No, but you did attempt to be an artist in drawing mould or whiskers, didn't you? Isn't that right?

A. No, sir, I know nothing about that.

Q. You do not remember that?

A. I wouldn't make an amateur at that.

Q. In the chill box that you have described or which you have referred to, were there vegetables stored in the same chill box with the eggs?

A. Eggs, cabbage, carrots, turnips—all kinds of vegetables. [1559]

Q. In the same chill box with the eggs?

A. That is right.

Q. Now, the eggs that you served—not those that you threw away, Mr. Brown—but those that you served had a bad taste, didn't they?

A. Well, now, like I said, I don't remember eating the eggs then, but they had enough bad taste for you and everybody else to complain about them all the time.

Q. They complained about the taste, too, didn't they?

A. I said they complained about the eggs. Your

(Testimony of Haffel H. Brown.)

taste and my taste and that man's taste is all different, so I'm not going to tell you what your taste is.

Q. But the men on the crew that you were cooking for complained about the taste of the eggs?

A. They complained about the food, yes, and I couldn't rectify it with what I had to work with.

Q. In other words, in May 1944, you described it this way, did you not:

"Q. Was there anything peculiar about the taste of the eggs that you described as having whiskers?

"A. The eggs that I served them looked all right, you understand, but they didn't taste all right. Some of them would be strong."

A. I made that tsatement, yes.

Q. But you do not remember eating any, is that right? Is that right, Mr. Brown, you do not remember eating the eggs yourself?

A. I don't remember whether I ate any eggs or not. I don't [1560] have to eat the eggs to know what is strong or not. I can put my finger in that butter or whatever I am frying it in and tell you whether it is or not.

Q. Regardless of that, you did fry these eggs and you did serve them? A. That is right.

Q. Now, in that refrigeration system on this vessel was it damp? A. How is that?

Q. This chill box, was it damp?

A. Damp?

Q. Pardon me?

A. Did you say was it——

(Testimony of Haffel H. Brown.)

Q. The chill box where the eggs were kept between October 15 and November 4, was it damp?

A. (The witness shook his head.)

Q. It wasn't damp. Did you give this answer to this question on the 18th of May, 1944:

"Q. And when you looked in the refrigerator you saw fruits and vegetables, including potatoes?

A. No, no, didn't have no potatoes down there.

"Q. Was there any butter and cheese inside the refrigerator?

"A. Not in that. We have a fish box and we have a butter, dairy box.

"Q. But there were vegetables and fruits then in the refrigerator with the eggs?

"A. That is right.

"Q. Do you remember whether it was damp in the refrigerator [1561] when you were down there during the first week?

"A. Whether it was damp?

"Q. Damp, yes.

"A. Well, yes. I figure that is what caused the thing to take that mould on. You see, the box went down.

"Q. And by going down do you mean it got colder or it got warmer?

"A. It got warmer."

A. I answered that question a few minutes ago.

Q. Yes, I know you answered it a few minutes ago and you also told it to Judge Goodell in May 1944, is that right?

(Testimony of Hallel H. Brown.)

A. If I told it just now, I told it then. I said it then.

Q. There isn't any question but that that refrigerator in the first week was damp, is there?

A. It is damp at the time I found it that way, you understand, but it was rectified right away quick. It wasn't down long enough to hold anything.

Q. Yes, I understand, but it was down far enough for you who were right on the job to form an opinion that the dampness of that refrigerator caused the mould, isn't that right?

A. No, I didn't say that.

Q. What did you mean, Mr. Brown, when you were asked this question:

"Q. Do you remember whether it was damp in the refrigerator when you were down there during the first week?

"A. Whether it was damp? [1562]

"Q. Damp, yes.

"A. Well, yes. I figured that is what caused the thing to take the mould on. You see, the box went down.

"Q. And by going down do you mean it got colder or it got warmer?

"A. It got warmer."

What did you mean there?

A. The engineer takes care of it. He is the man to do it.

Q. The engineer was pretty busy trying to take

(Testimony of Haffel H. Brown.)

care of that refrigeration when you were on that maiden voyage of the vessel, wasn't he?

A. Well, I don't say that. That engineer would be just like you or I. You grab hold of something you aren't familiar with. You got to figure around until you do get familiar with it, and he is the chief engineer and that is his work.

Q. And he was trying to get familiar with the refrigeration on the SS. Clark on its first voyage?

A. He had to familiarize himself with that work in order to keep the thing going like it should go.

Q. Were you asked this question:

"Q. When eggs were brought into the galley from the refrigerator, were they brought into the galley in egg cases?

"A. No, sir."

A. That's right. [1563]

Mr. Faulkner: That is all.

The Witness: Wait a minute.

Mr. Faulkner: That is all.

Redirect Examination

Mr. Pratt: Q. Did you finish your answer to that last question?

A. He said that was all, so I didn't let him go ahead.

Q. Finish the answer to the question.

Mr. Faulkner: I object to that as not proper redirect examination. If Mr. Pratt wants to ask him a question——

The Court: There is a question about whether he had concluded his answer.

(Testimony of Haffel H. Brown.)

Mr. Pratt: I would like to have the record read.

The Court: Read the question and answer, Mr. Reporter.

(Record read.)

Mr. Faulkner: Now, the only question was did he give that testimony in the deposition.

The Court: He may explain that answer if he wishes.

Q. Is there anything further you wish to say to that answer?

A. About bringing those eggs in?

Q. In relation to your answer?

A. Is there anything I want to say?

Q. Yes?

A. Why, yes. As I told you, I would send my boy down there. He would bring up a bucket of eggs, but the eggs got so bad I made him bring the whole box up to me. [1564]

Mr. Faulkner: Q. Mr. Brown, you were asked the particular question before Judge Goodell if the eggs were ever brought up into the galley in a case.

Mr. Pratt: That was not the question that you read from the deposition—whether they were ever brought up in any other way.

Mr. Faulkner: May I have that question re-read, your Honor?

(The reporter reading:)

"Q. When eggs were brought into the galley from the refrigerator were they brought in the galley in the egg case?

(Testimony of Haffel H. Brown.)

"A. No, sir."

Mr. Pratt: What I object to is the question, the last question asked by Counsel, which attempted to repeat what the former question had been, and I think he made a mistake and I would like to have read the last question that Mr. Faulkner asked.

The Court: Read the last two or three questions and answers so there is no question about it.

(Record read.)

Mr. Pratt: That question was not asked.

The Court: Proceed. Clear up the record if there is anything else you wish to clear up.

Mr. Faulkner: Q. Isn't it a fact that the only cases you [1565] saw were empty cases that were brought up and used for kindling wood?

A. What was that question you asked me?

Q. Isn't it a fact that in the first part of this voyage the only cases of eggs which you saw in your galley were empty cases used for kindling wood?

A. No, because I made firewood out of the cases.

Q. Didn't you give these answers to Judge Goodell on May 18, 1944:

"Q. When eggs were brought into the galley from the refrigerator were they brought into the galley in the egg case?

"A. No, sir.

"Q. You did not see any of the cases from which eggs came, that is, in the galley?

"A. Did I get you? Did I understand you to say that I didn't see the cases that the eggs came out of came into the galley?

(Testimony of Hazel H. Brown.)

"Q. Yes.

"A. I didn't say that.

"Q. No, I didn't mean that either. I will withdraw my question. There were no egg cases in the galley, were there?

"A. The only time the egg cases was in there, when they would bring them up empty; the boys bring them up empty to make firewood out of them." [1566]

Didn't you give those answers to Judge Goodell?

A. I can't remember.

Q. You don't remember? A. No.

Mr. Faulkner: That is all.

Mr. Pratt: If the Court please, I would like to have——

Mr. Faulkner: That is my private record prepared for this trial, not a public document.

Mr. Pratt: The witness has been cross-examined in connection with the deposition which Counsel has and I would like to see it.

Mr. Faulkner: He hasn't any more right to my private records, your Honor——

The Court: It is part of this record now. He is entitled to it on cross-examination.

Mr. Faulkner: Pardon me?

The Court: He is entitled to it on cross-examination.

Mr. Faulkner: My record?

The Court: The matter that you went into from that record.

Mr. Faulkner: That is my private record.

(Testimony of Haffel H. Brown.)

The Court: He may use it.

Mr. Faulkner: That is my private record.

The Court: He may use it.

Mr. Faulkner: Then I would ask the Court that at any time Counsel uses that book that I be permitted to see that.

The Court: There is nothing before the Court other than [1567] this question. He wants to cross-examine on the matter that you went into in relation to this record.

Mr. Faulkner: I except to the ruling of the Court which requires me to give a private record that I have assembled for my defense to counsel for the Government. The deposition is on file in the Superior Court.

The Court: Is there a copy of this?

Mr. Pratt: I have no copy of it. Counsel has used it in cross-examination.

The Court: For that limited purpose you may use it.

Mr. Pratt: I want the deposition.

Mr. Faulkner: I will resist the order and except to it.

Mr. Pratt: Is there anything more in this paper other than just the deposition?

Mr. Faulkner: The Court is ordering me to give this paper to you against my very definite objection. This is the paper I used in the examination and it is my paper.

The Court: Any time it is used, it is part of this record. The Court has ruled it may be gone into.

(Testimony of Moffet H. Brown.)

Mr. Faulkner: I beg your pardon. I never showed the deposition to the witness. I have only asked him the questions.

The Court: The Court has ruled. We may now proceed.

Mr. Faulkner: Very well, exception.

Mr. Pratt: All I want is the deposition, a copy of the [1568] deposition which Counsel used. If there is anything else in this paper other than the deposition of this witness taken on the occasion that he referred to, I would like to have Counsel remove it from the paper. Otherwise I want the whole deposition.

Mr. Faulkner: The Court has ordered me to hand that paper to you. That is the only paper I used in the presence of the Court and the Jury.

The Court: The Court has ruled. The matter has been gone into from this document on cross-examination. You may go into that phase of it.

Mr. Pratt: I should like to have it marked for identification.

Mr. Faulkner: Your Honor, I certainly object to them taking a paper out of my file and making it a record in this case. That is my document.

The Court: Is that document available to them?

Mr. Faulkner: Yes, sir.

The Court: Where?

Mr. Faulkner: It is in the City Hall, the original deposition returned to the Court with the drawing of the witness. That is mine.

The Court: Well, it cannot be used and limited

(Testimony of Haffel H. Brown.)

here by you. He has a right to cross-examine on any matter that was gone into from this document.

Mr. Faulkner: I agree, your Honor, but he can't take my papers.

The Court: I am not indicating that he can.

Mr. Faulkner: That is what he is doing. That is mine.

Mr. Pratt: I should like the record to show that this document is entitled as follows:

"In the Superior Court of the State of California, in and for the City and County of San Francisco, Honorable C. J. Goodell, Judge, Department 16; William J. Cecil, Director of Agriculture of the State of California, Plaintiff, vs. Nye & Nissen, Inc., a California corporation et al, defendants. No. 325,017. Deposition of Haffel H. Brown, Thursday, May 18, 1944, reported by W. A. Foster, Foster, Sweeney & Linehan, Official Shorthand Reporters, 1095 Market Street, San Francisco, California. Market 0151,"

and the document apparently has nothing in it but the deposition of this witness and a certificate at the end, which is unsigned, which starts:

"I, C. J. Goodell, Judge of the Superior Court—"

Mr. Faulkner: Your Honor, I object to this method. That is a private record. It is a copy of an official record, and it is mine, and I submit, your Honor, to have them reach into my defense bag and take that paper and then have it marked for identification, I submit—— [1570]

(Testimony of Haffie H. Brown.)

The Court: There is nothing before this Court now. You may proceed, gentlemen, with this trial.

Mr. Pratt: May it be marked for identification?

The Court: It may be marked for identification.

(The document was thereupon marked U. S. Exhibit 118 for Identification.)

Mr. Faulkner: I except to the marking of it.

The Court: Note an exception.

Mr. Faulkner: To the Court ordering that my record be taken from the file and made a record of the Court.

Mr. Pratt: Q. Mr. Brown, referring to this chill box, you have already stated that this was a new boat? A. Yes, sir.

Q. Will you state when you first went onto this boat, when you first went into the chill box?

A. When I first went into the chill box?

Q. Yes.

A. Going around—looking around in my department, which is the steward's department, you understand, to see where all the stuff is kept, what kind of shape it would be in.

Q. Were you in charge of that chill box and of its contents? A. And its contents?

Q. Yes?

A. Jointly with the chief steward.

Q. When you first went into that box what was its condition?

A. Its condition—a brand new box.

Q. Do you know what temperature that chill box was when you first went into it?

(Testimony of Haffel H. Brown.)

A. No, I do not. [1571]

Q. Was it the normal temperature that a chill box should be kept at?

A. Oh, yes, yes, sir.

Q. Was there some difficulty with this chill box?

A. How is that?

Q. Was there some trouble with the chill box?

A. Well, the gadget right outside the door went down, you understand, showed a red light, which means there is something wrong, you understand. When I seen that I reported to the chief engineer and he came and rectified it.

Q. How long did this red light show, if you know?

A. Well, when I went down there it was showing then. How long it had been on I wouldn't say.

Q. How long before that had you been there at the chill box?

A. I hadn't been there before that.

Q. That was the first day you were on the boat, was it?

A. That was the next morning. That was the morning I started serving meals. I went down there for something—I don't remember just what it was now.

Q. How long had the supplies, the stores, been on the boat at that time?

A. At that time?

Q. Yes.

A. Right when we came up against—what do you call it—dock today, you understand—this after-

(Testimony of Haffel H. Brown.)

noon, some time, put some on that evening and some on that night.

Q. Then it was the next morning you saw this light shining and called the engineer's attention to it? A. That is right. [1572]

Q. How long was it before he rectified the trouble?

A. Well, he went after it right away, I guess, but I came back on up to the galley. I had no business down there.

Q. Do you know for how long a period there was any trouble with the chill box owing to the temperature going down? A. How long a period?

Q. How long did that last?

Mr. Faulkner: We submit, your Honor——

Mr. Pratt: If you know.

Mr. Faulkner: This is not the best evidence. We have these transactions where other witnesses have testified with clear and unequivocal evidence, but evidence of these conditions has never been produced in court, and anybody knows the engineer's log shows the condition of the chill box. Yet we have cooks and stewards coming in to testify to things when the best evidence is in existence.

Mr. Pratt: Is there any objection?

Mr. Faulkner: We object to it on the ground it is not proper redirect examination.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Will you read the question?

(The last question was read.)

(Testimony of Haffel H. Brown.)

Mr. Pratt: Q. The condition of the box being down a bit in temperature?

A. It couldn't have lasted very long, [1573] because when I went down there again after breakfast was over with, he had it all right.

Q. Then it was a matter of how long perhaps?

A. Oh, I wouldn't say. I wouldn't say. Not so very long. No matter of hours or anything like that, you know.

Q. It was not as long as hours?

A. No, no. Get hold of a little gadget and turn it.

Q. After that time, from that time on, was there any further trouble with the chill box?

A. No.

Q. So far as you know?

A. Until I tell him to cut it down, you know, defrost it.

Q. Until you defrosted it?

A. Until I got ready to defrost it.

Q. How frequently did you defrost that box?

A. Well, when the ice would pack on the pipes, you understand, freeze there, you understand, snow would be there, and when the pipe would be icy and you get no results, I have to have it defrosted and get all the stuff off the pipes.

Q. Did you have occasion to have the chill box defrosted between the time you went on the boat and the time you arrived down at Long Beach?

A. No, no. [1574]

Mr. Pratt: If the Court please, after examining

(Testimony of Haffel H. Brown.)

this document which Mr. Faulkner now has, it is possible I might want to ask some further questions in redirect examination.

The Court: We will take a recess for a few minutes.

(Recess.)

Mr. Pratt: Q. Mr. Brown, in answer to a question by Mr. Faulkner, you said that from the time you left Los Angeles, or San Francisco, or from the time you first started serving these eggs until you got down there to Long Beach that the character or quality of the eggs got worse and worse.

A. Well, from box to box I could see no improvement. The improvement was so bad that I just threatened to get off the ship unless I got some eggs to work with.

Q. Was there any change in the condition of the eggs from the time you first started serving them until you got to Long Beach?

A. No, none, whatsoever.

Recross Examination

Mr. Faulkner: Q. Mr. Brown, you were asked some questions a moment ago about the refrigeration. I will ask you if you were asked these questions in this deposition before Judge Goodell, and if you gave these answers:

"Q. Just for the sake of the record, how was the refrigeration?

"A. The refrigeration was pretty good.

"Q. Pretty good? A. Pretty good.

(Testimony of Haffel H. Brown.)

"Q. What do you mean, 'Pretty good'?

"A. Just a moment; I said it was pretty good, and it was pretty good, because I [1575] had a good chief engineer on there. But like everything else, once in a while something would go haywire, you understand, those things would go haywire and I would have to report to the chief engineer and he made it right.

"Q. When the machine breaks down?

"A. Yes, sir.

"Q. Did the machine break down any time between October 14th and November 4th?

"A. Several times it got down low, you understand, you have got your temperature; when that temperature falls down——

"Falls, or rises?

"A. It fall; you know what I mean, not the right temperatures; it will go down, you understand, to show you that it isn't the right temperature in there.

"Q. What is the right temperature?

"A. How is that?

"Q. What is the right temperature?

"A. Well, along about 96; somewheres along there; that is, in some of the boxes, you understand.

"Q. I mean in the chill box. You don't keep eggs in 96.

"A. No, it is things of a special nature, because you keep all vegetables and eggs in there; you can't keep eggs where it is freezing, you understand.

"Q. No, I understand; but you can't keep them at 96, either.

(Testimony of Haffel H. Brown.)

"The Court: Q. Do you know what the temperature was in the cold box?

"A. No, I don't have nothing to do with that, Judge. I don't have nothing to do with that, at all."

Did you give those answers to those questions?

A. That is the chief engineer's work, and when I find a defect I notify him, and in a little while everything is all right.

Q. At that time you thought the temperature of that chill box was 96, didn't you?

A. I might have said it, but I don't have any recollection of it, now, it has been so long.

Q. I will ask you if you did not give these answers to these questions at the same deposition before Judge Goodell:

"Q. On these particular eggs——

"A. Some of these I did. They got so bad I just got all out of fix and didn't want anything further—

"Q. What I am getting at is this: You have described the eggs as having what you call a mouldy appearance. I want to know, first of all, if you remember wiping off that mouldy appearance.

"A. Yes.

"Q. Did you?

"A. The consequence would be that after I would wipe it off, you understand, to keep that little dirt from falling in the bowl where I crack it in—"

Mr. Pratt: Your Honor, I object to this on the ground that it is not proper recross-examination.

Mr. Faulkner: Well, I have not finished. I want to read the question.

(Testimony of Haffel H. Brown.)

"The Court: Q. Are you a pretty good artist, Mr. Brown? A. Artist?

"Q. Yes.

"Mr. Hassler: Q. Can you draw pictures?

"A. I never had no lessons in artist. [1577]

The Court: You go to it, Mr. Hassler; there is an egg (handing paper to counsel).

Mr. Hassler: Q. Now, Mr. Brown, this is an egg. A. O. K.

Q. Can you, with a pencil, indicate on that egg something that looks like the eggs you have just described?

A. Well, I can put this on here and when you crack an eggs you look at it and you will find——

Q. This is before it is cracked, Mr. Brown.

The Court: No; he wants put on there as best you can the appearance of the bad eggs or the outside of the shell before they are cracked open.

A. Well, all I could put on there—all I could say would be a little kind of fuzz. Some people call it whiskers. It is more on the order of mold, like, you understand."

Mr. Pratt: Again, your Honor, I object; it is not proper recross-examination.

Mr. Faulkner: I have not finished, your Honor.

"The Court: Before you come to that, I think you had better lay a further foundation as to whether the shells had anything on them—you know what I mean—besides whiskers.

Mr. Hassler: Yes, your Honor.

"Q. Further describing that shell, Mr. Brown,

(Testimony of Haffel H. Brown.)

I think [1579] if we would clarify that question on mold, was the mold which you describe—I don't know of any other way of asking this, so I will take a chance on asking a leading question and you can object, Mr. Freed—the mold had a definite color, did it not? If that were a white egg, would be mold be white?

"A. Well, it would be practically the same on either one, as far as I know.

"Q. Would it be the color of the egg, or would it have a color of its own?

"A. Kind of snowish color.

"Q. Snowy kind of color?

"A. Snowish kind of color.

"Q. In other words, on a white egg the mold would be a snowy color? A. Snowy color.

"Q. Snowy color egg."

Did you give those answers to those questions?

Mr. Pratt: I object to that as not proper recross examination.

Mr. Faulkner: Before your Honor rules, if there is any question about it being recross I ask the privilege of reopening the cross-examination to propound the question.

The Court: You may answer.

Mr. Faulkner: Q. Did you give those answers?

A. As I told you, my memory is not as good right now as it was two years ago when all this happened, you understand.

Q. You gave those answers, didn't you?

A. I said my memory is not as good right now

(Testimony of Haffel H. Brown.)

as it was two years ago when I was [1579] going through this trouble and having my troubles with our foodstuffff on there.

Q. I understand that, but would your memory be better, naturally, in May, 1944, than now? I understand it would be, but I want to know if you gave those answers to those questions.

A. Well, it has been so long ago I don't know.

Q. You don't know. A. No.

Mr. Faulkner: That is all.

The Court: Step down.

WILBUR J. MILLS,

called as a witness by the Government; sworn.

The Court: Will you state your name?

A. Wilbur J. Mills.

Direct Examination

Mr. Pratt: Q. Where do you reside, Mr. Mills?

A. Los Angeles, California.

Q. What is your occupation?

A. Warehouse, refrigerated warehousing, assistant manager.

Q. The name of the concern is the Terminal Refrigerating Company, is that right?

A. Correct.

Q. You are the assistant manager?

A. Yes.

(Testimony of Wilbur J. Mills.)

Q. Are you familiar with the records of that company? A. I am.

Q. Have you brought with you some of the official records of the Terminal Refrigerating Company, records kept in the ordinary and regular course of business? A. I have. [1580]

Q. Will you produce your records of the storage of eggs, of certain eggs at the Terminal Refrigerating Company in Los Angeles; a storage of eggs made by Nye & Nissen in February of 1943?

A. I will.

Q. You have such a record, have you not?

A. I do have, yes.

Q. Will you produce first the record of the receipt of those eggs at your warehouse in Los Angeles? A. Yes, sir.

Q. Will you produce that record?

A. Here is the storage record, I believe. That covers 261 cases. Here is another portion of eggs received.

Q. The paper which you first handed me, two of them, one is apparently a carbon copy of the other, so I will ask that the first one, the original I will ask you just what that paper is and what it shows.

A. That shows the receipt of 80 cases of medium eggs, 111 cases of white and 70 cases of browns.

Q. Referring to

A. From the M. & M. Trucking Company.

Q. M. & M. Truck. Let me call your attention first to the 80 cases of medium eggs referred to on

(Testimony of Wilbur J. Mills.)

this paper. This delivery ticket is from the original records of your company, is it?

A. That is correct.

Q. When does it show that these 80 cases of medium eggs were received by your company at your refrigerated warehouse?

A. Received on February 10th assigned dock lot No. 264.

Q. Do these two papers then show the receipt at your warehouse [1581] of these 80 cases of medium eggs? A. That is correct.

Q. For whose account were they received?

A. Account of Nye & Nissen Company.

Q. Nye & Nissen.

Mr. Pratt: I offer these in evidence.

Mr. Faulkner: Well, your Honor, we object to them in evidence at this time as incompetent, irrelevant, and immaterial: no foundation laid. Here is a delivery of some eggs to a company on February 10, a refrigerating company, 80 cases of eggs delivered by the M. & M. Motor Company.

Mr. Pratt: For the account of Nye & Nissen.

Mr. Faulkner: For the account of Nye & Nissen.

Mr. Pratt: This is also a start toward tracing these eggs onto the William S. Clark ten months later.

Mr. Faulkner: They have not done that, so this is not admissible until they show a foundation showing it is within the purpose of the indictment.

The Court: Unless they connect it up I will

(Testimony of Wilbur J. Mills.)

strike it out. It will be allowed in subject to your motion to strike and over your objection.

Mr. Faulkner: Are you offering them on all counts?

Mr. Pratt: On the first count of the indictment.

Mr. Faulkner: I except to that ruling, your Honor, as incompetent, irrelevant, and immaterial, no foundation laid; no foundation laid in the showing of conspiracy, or any [1582] foundation laid relating to these particular eggs in this subject matter.

The Court: Overruled.

Mr. Faulkner: Exception.

(The document was marked U. S. Exhibit 119 in evidence.)

Mr. Pratt: Q. This relates to 80 cases of eggs. Have you a record of an additional 25 cases of eggs, of medium eggs, for the account of Nye & Nissen, about that same time, namely, February, 1943?

A. Yes, I do.

Q. What is that record?

A. That is a record of eggs received in a car No. MX2782, 25 cases, Medium eggs.

Q. What document do you have to establish that? A. Unloading records from that car.

Q. The 80 cases and the 25 cases together make 105 cases of eggs. Have you any documents to show the storage of those 105 cases of medium eggs for the account of Nye & Nissen?

A. I do. Here is ticket No. 16234 showing 80 cases were stored out of dock lot 264, and our ticket

(Testimony of Wilbur J. Mills.)

also 16254 showing 25 cases out of the car we have just mentioned.

Q. Referring to these two papers which, first, I will ask be marked for identification, three papers, rather, the first showing "Terminal Refrigerating Company," dated February 5, 1943——

The Clerk: That will be 120 for Identification.

(The document was marked U. S. Exhibit 120 for Identification.)

Mr. Pratt: Next a receiving memorandum of the Terminal Refrigerating Company dated February 10, 1943, for 80 cases of eggs.

(The document was marked U. S. Exhibit 121 for Identification.)

Mr. Pratt: Next a similar receiving memorandum dated February 11, 1943 showing 25 cases of Medium eggs.

(The document was marked U. S. Exhibit 122 for Identification.)

The Court: Admitted and marked.

Mr. Faulkner: Your Honor said, "Admitted and marked." It is merely offered for identification.

The Court: Admitted and marked for identification.

Mr. Pratt: Q. Mr. Mills, directing your attention to these two receiving memoranda, Exhibits 121 and 122 for Identification, I will ask what the No. 3337 at the left means on each of these papers.

A. That is the lot number assigned to these par-

(Testimony of Wilbur J. Mills.)

ticular eggs for the purpose of warehousing. Merchandise going into storage bears only lot numbers.

Q. Then these eggs, in the aggregate, were how many cases? A. 105.

Q. 105 cases were all given lot 3737?

A. That is correct.

Q. Was there anything else in lot 3737 besides those 105 cases of eggs?

A. I don't believe so. Merely 105 cases of eggs. [1584]

Q. I notice on Exhibit 121 for Identification appears the figures 3737, the lot number, and then in ink, "60" over which in pencil is "70."

A. That is correct. The shipment as it was turned over to us was supposed to have contained 60 Mediums, but actually checked out 80 Mediums on receipts.

Q. When you received these in storage in your warehouse you said they bore the lot number 3737. What, if any, record was given to Nye & Nissen of the storage of those eggs in that lot number?

A. Warehouse receipts.

Q. Have you a copy of that warehouse receipt?

A. I am sorry, I don't happen to have that here.

Q. What further records have you with you showing the storage of these 105 cases of eggs at your warehouse in Los Angeles?

A. Ledger sheets which are a part of that record.

Q. This is an original ledger sheet, is it, of that transaction? A. They are.

(Testimony of Wilbur J. Mills.)

Q. I notice that attached to it, clipped to it, are two other papers. What are they?

A. The white ticket, which is No. 31259, shows delivery of 105 cases of eggs on lot No. 3737 to California Freight Lines for delivery to Nye & Nissen at San Francisco. Attached thereto is an order from Nye & Nissen instructing us to deliver to California Freight Lines those 105 cases of eggs.

Mr. Pratt: This paper which has just been handed to me, this ledger sheet, may it be marked for identification and also the two separate papers separately? [1585]

The Court: Admitted and marked.

The Clerk: The larger sheet will be 123, and the others 124 and 125.

(The documents were marked, respectively, U. S. Exhibits 123, 124 and 125 for Identification.)

Mr. Pratt: I direct your attention to Exhibit 125 for Identification, this is the paper which you have produced, and what is that, please?

A. This is a ticket used in our organization to order merchandise ex warehouse.

Q. To order it out? A. Yes.

Q. You ordered these 105 cases of eggs out, did you? A. We did.

Q. To whom?

A. To Nye & Nissen, San Francisco.

Q. By what means? To a trucking company?

A. To a trucking company, the California freight lines.

(Testimony of William J. Mills.)

Q. Then the description of the product appears there, the lot number. It says "105 cases of eggs lot 3737." A. Correct.

Q. Are those the same 105 cases of eggs which are mentioned on the ledger sheet?

A. They are.

Q. When did these eggs, these 105 cases, come into your warehouse actually?

A. They were received, 25 cases were unloaded on the 8th of February, and the 80 cases were received on the 10th of February.

Q. The 10th of February, 1943?

A. Yes.

Q. Do you know when those eggs arrived in Los Angeles? A. No. [1586]

Q. Have you any record to show?

A. I have on the 25 cases only. They arrived in Los Angeles, it would show on that car sheet. They were in our yard on the 29th of January, 1943.

Q. 29th of January, and were taken to storage on the 8th of February?

A. 10th of February.

Q. 1943. This next paper which I have is Exhibit 124 for Identification, and what is that?

A. That is an order form which we require on all merchandise ordered from storage.

Q. Is that an order from Nye & Nissen to take these 105 cases out of storage?

A. It is.

Q. And it is signed

Mr. Faulkner: May I see it?

(Testimony of Wilbur J. Mills.)

Mr. Pratt: It appears to be signed "Nye & Nissen, D. Weinstein." Do you know who D. Weinstein is? A. Yes, I do.

Q. Who is D. Weinstein?

A. She is a local representative for Nye & Nissen, Dora Weinstein.

Q. Dora Weinstein.

Mr. Faulkner: We object to this as far afield, a transaction down in Los Angeles in February, 1943, going in evidence against all of these defendants on the conspiracy count, Mr. Weinstein handling it——

Mr. Pratt: Mrs. Weinstein.

Mr. Faulkner: Well, Mr. or Mrs., same thing; hearsay, not binding upon the defendants, not binding upon the defendants, not within the issues of the case? [1587]

Mr. Pratt: It will be connected, if the Court please, very definitely.

The Court: Overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Q. Do you happen to know—you say D. Weinstein is Dora Weinstein?

A. Yes.

Q. Mrs. Weinstein? A. Yes.

Q. Do you happen to know of her relationship to any of the defendants in this case?

A. She is—she was a Miss Mouclarsh before her marriage.

Q. She was Miss Moncharsh before she was married? A. Yes.

(Testimony of Wilbur J. Mills.)

Q. What relation, if you know, to Abraham Moncharsh, the defendant in this case?

A. Sister.

Q. Sister. Now, Mr. Mills, these documents, I take it, that you have identified, show that these 105 cases of eggs were placed in storage in your warehouse in Los Angeles about the 10th of February, 1943. A. That is correct.

Q. When did they leave your warehouse?

A. October 15, at 2:53 p. m.

Q. 1943? A. Yes.

Q. Directing your attention to this Exhibit 124, the paper signed "Nye & Nissen per D. Weinstein," I notice that is dated October 14, 1943.

A. Correct. The order was given to us on the 14th but the truck came on the 15th.

Q. The order was to send those 105 cases from your warehouse [1588] in Los Angeles to Nye & Nissen, in San Francisco, is that right.

A. Correct.

Q. You then delivered them to whom?

A. California Freight Service.

Q. California Freight Service. Do you know how these 125 cases of eggs were marked when they went into storage at your place—105 cases, excuse me?

A. 105, given this lot number, 3737.

Q. When packages are placed in storage, how are they marked, if they are marked?

A. With a lotting device.

Q. A lotting device. What do you mean by that?

(Testimony of Wilbur J. Mills.)

It is one of these—as the merchandise receives a lot number assigned, it is merely about four rubber bands on a circular band which go on, move around. They are moved around. In this case the lot number 3737 was put on there with purple ink.

Q. Put on each case of eggs?

A. Each case.

Q. Was it steneiled on or stamped?

A. Stamped on the side of the case.

Q. Do you know whether those were put on the side or the end of the case?

A. Generally on the end.

Q. On the end. Was each of these 105 cases so marked? A. It was. [1589]

Mr. Pratt: If the Court please, I offer in evidence these exhibits which were marked for identificatoin from 120 to 125, inclusive.

Mr. Faulkner: We object to them as incompetent, irrelevant and immaterial, and hearsay as to the defendants, and no foundation laid in connecting any of the defendants in this case with this transaction in any manner.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

(The U. S. Exhibits 120 to 125, inclusive for Identification were thereupon received in evidence.)

Mr. Pratt: Q. You have handed me another document now labeled, "Uniform Straight Bill of Lading." This is the bill of lading whereby this

(Testimony of Wilbur J. Mills)

freight was transferred from your place to Nye & Nissen at San Francisco?

A. That is right.

Q. And I notice that on the bottom is a penciled signature, "California Freight Lines, J. Cook."

A. That is correct.

Q. Is that the receipt of the trucking company?

A. That is right.

Q. And otherwise does this paper come from the regular records of your corporation?

A. It does.

Mr. Pratt: I offer this also in evidence. It describes 105 cases of eggs, lot No. 3737, to be sent from the Terminal Refrigerating Company, Los Angeles, to Nye & Nissen, San Francisco. [1590]

Mr. Faulkner: Same objection, your Honor, as to the last named.

The Court: Is there a date on it?

Mr. Pratt: Yes, it is dated October 15, 1943.

The Court: It may be admitted and marked. The objection may be overruled.

(The document was marked U. S. Exhibit 126 in evidence.)

Mr. Pratt: That is all.

Mr. Faulkner: Before cross-examining this witness, your Honor, will recall that Mr. Pratt said he would connect this testimony with some transaction. I would like to know the transaction so I can intelligently examine the witness.

Mr. Pratt: These eggs which were placed in storage in February, 1943, at Los Angeles were